

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

PATRICK P [REDACTED]

by the Mauston School District
Board of Education

DECISION
AND
ORDER
90-EX-02

NATURE OF THE APPEAL

This matter is before the State Superintendent of Public Instruction under s. 120.13(1)(c), Wis. Stats., from the decision of the Mauston School District Board of Education to expel Patrick P [REDACTED] for the remainder of the 1989-90 school year. This appeal was received by the Department on February 28, 1990 by Patrick's mother, Loretta P [REDACTED].

In accordance with the provisions of s. PI 1.04(5), Wis. Adm. Code, this decision is confined to a review of the record of the school board hearing, additional material filed in this appeal and the procedural standards the school board must follow in accordance with s. 120.13(1)(c), Wis. Stats. In reviewing an appeal of an expulsion decision, the scope of the state superintendent's review authority is specified in s. 120.13(1)(c), Wis. Stats. The state superintendent's role is to ensure that the required statutory procedures were followed and that the board's decision is based upon one of the established statutory grounds.

FINDINGS OF FACT

1. On December 13, 1989, Loretta P [REDACTED] received a letter from T. A. Gruman, assistant principal of the Mauston High School, which indicated that Patrick had been suspended from the school pending an expulsion hearing. In addition it stated:

As a result of your son's actions at school, we find it necessary to meet with the Mauston School board to discuss future considerations involving Pat's education. The Mauston Board of Education will schedule this matter as part of their regular board meeting on Monday, December 18, 1989. They will discuss this at 9:00 p.m. You may request a closed meeting with you and your son and your representatives and/or legal council (sic).

Our concerns are:

- physically assaulting a member of the high school staff on Monday, December 11
- being physically abusive with fellow students
- failure to carry out the directive given in November to return to an assigned locker

As a result of the attack on a staff member, we are directed by Board Policy as defined in the 1989-90 "Student/Parent Handbook" (C-3) to convene a hearing as soon as possible. The hearing decision may result in expulsion from regular attendance at Mauston High School.

A copy of the statute, s.120.13(1)(c) was printed on the back of the notice of expulsion hearing.

2. An expulsion hearing was held before the Board on December 18, 1989. Patrick, his mother, and their attorney, Dennis Schuh, were present at the hearing. Evidence was presented. A motion to expel Patrick failed. However, the following motion passed:

Motion by Hoffman/Noe directing Mr. Curran to draft a contract allowing Patrick P. [REDACTED] to return to Mauston High School on a Step 7 of the disciplinary system. Any breach of the disciplinary rules or points of the contract will result in another student disciplinary hearing to be held at the January 15 Board meeting.

3. The disciplinary contract was reviewed by the board at the January 15 meeting. A "compliance report" was given at that meeting. The compliance report as contained within the minutes of that meeting state that, "To date, Pat has received no Step 1 violations." and that "He is expected to follow the the terms of his probationary contract or face another expulsion hearing." No specific board action was taken on the compliance report.
4. By letter received January 22,1990 Patrick and his mother were notified of a second expulsion hearing. That notice stated in total:

Patrick has again been suspended from Mauston High School for slapping another student after the Winterfest Assembly on January 19. The suspension will be in force pending an expulsion hearing Monday January 29 at 8:00 p.m. in the High School Library. You may request a closed meeting with the Board. Representatives of your choice and/or legal council (sic) may be present.

This action results from the Step 4 violation of physically assaulting another student. Patrick has been on a Step 7 for the physical attack of a teacher. The contract signed by you, your son, and the President of the School Board clearly states that further violations will result in another expulsion hearing. If you have further questions, please contact me at the High School.

A copy of the statute, s.120.13(1)(c) was not attached to this notice.

5. A hearing on Patrick's expulsion was held on January 29, 1990. Patrick and his mother, Loretta, attended the meeting and presented evidence to the board. The high school principal, William Bomber, also presented evidence. The evidence included a statement from Liz N█████, another student and Patrick's girlfriend, that Patrick had grabbed her and slapped her before she had left school on January 19, 1990. In addition, William Bomber stated that Patrick had not provided the school with a written report from a doctor concerning his "depression and rage." Ms. R█████ testified that she had fulfilled this section of the disciplinary agreement

by providing the information to the board at the January 15, 1990 meeting. The board voted to expel Patrick.

6. By letter dated January 29, 1990, Patrick and Ms. P██████████ were notified of the board's action. This notice included the following findings:

(a) Patrick did physically assault a student on January 19, 1990.

(b) Patrick broke his Discipline Agreement by failing to provide the administration or the Board with a written report from Dr. Ness identifying any health conditions diagnosis and plan for treatment and further violating paragraph 3 in that he failed to provide Mr. Olson with confirmation that he is following a treatment plan or confirm that his depression and rage are under control.

(c) The board finds that this assault on Liz N██████████ constitutes conduct while at school which endangers the health or safety of a fellow student under s. 120.13(1)(c).

(d) The Board finds that Pat's failure to comply with the Discipline Agreement of December 19 at which time he was placed at a step 7 on the school's progressive discipline policy and when coupled with the incident of 1/19/90, constitutes a repeated refusal or neglect to obey the rules under s.120.13(1)(c).

(e) The board finds that this matter having been before the board for expulsion on 12/18/89, review on 01/15/90 and again on 01/29/90 constitutes reasonable notice to Mr. P██████████ of the seriousness and effect of the violation.

CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free School District, 186 Wis. 342, 353 (1925). A school board's power to expel students derives from s. 120.13(1)(c), Wis. Stats., which sets forth specific procedures which must be followed in the expulsion process. Section 120.13(1)(c), Wis. Stats., reads in pertinent part:

Prior to such expulsion, the school board shall hold a hearing. Not less than 5 days' written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian, specifying the particulars of the alleged refusal, neglect or conduct, stating the time and place of the hearing and stating that the hearing may result in the pupil's expulsion. . . . This paragraph shall be printed in full on the face or back of the notice.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the state superintendent's review is limited by the language of s. 120.13(1)(c), Wis. Stats. In Racine Unified School District v. Thompson, 107 Wis. 2d 667, 321 N.W.2d 334 (1982), the Court of Appeals stated "the superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc." It is, therefore, the role of the

state superintendent in reviewing an expulsion decision to ensure that the statutory procedures were followed.

Here it appears from the record that Patrick and his mother were not provided with sufficient written notice of the January 29, 1990 expulsion hearing. The notice given to each of them on January 22, 1990 failed to contain a copy of s. 120.13(1)(c), Wis. Stats., as required by that statute.

In previous decisions I have reversed school boards' expulsion decisions for failing to fully follow the statutory mandates. Here I recognize that Patrick and his mother had been fully informed of his rights and the statutory procedures approximately a month prior in the December 13, 1989 notice for the December 19, 1989 expulsion hearing. They appeared with counsel at that hearing and addressed the issues before the board. At that hearing they were in fact successful, in that Patrick was not expelled at that time. They received no written notice of the second school board meeting, but appeared and addressed the concerns raised by the administration in the "compliance" report. No negative action was taken by the board at that meeting either. Patrick and his mother appeared before the board for the third time at the January 29, 1990 hearing. Their attendance at that meeting was in response to the January 22, 1990 notice which did not fully inform them of the statutory provisions relating to expulsion hearings. Patrick and his mother might have had constructive notice of the expulsion hearing on January 29, 1990. However, they were entitled to

the full notice required by the statute which includes providing a copy of the expulsion statute which outlines their rights. I do not know what they might have done differently at the hearing had they been fully advised of the statutory provisions at that time. They appeared at the first hearing, which was in response to a correct notice, with counsel. Had they been more completely informed they may have chosen to be represented by counsel at the January 29, 1990 expulsion hearing. It is difficult and unnecessary to speculate as to what might have been. I am bound in these reviews to a strict adherence to procedural safeguards and may not decide on an arbitrary basis which are necessary and which are not.

I have consistently held that failure to fully comply with the notice provisions in the statute is fatal error. The notice provisions contained in the statute are mandatory and failure to comply with them renders the expulsion decision void. James K. v. West Allis School District, Decision and Order No. 166 (4/18/90); Travis V. v. Waterloo School District, Decision and Order No. 144 (7/2/86); Michelle R. v. Suring Public Schools Board of Education, Decision and Order No. 126 (3/7/85). Because of the board's failure to follow the statutory mandate requiring a copy of the statute to be attached to the notice of the expulsion hearing, I must reverse the board's decision.

Patrick and his mother have raised a number of issues for review on this appeal. I will not address the specific

merits of those issues. They are substantive in nature and, therefore, outside of the scope of my review authority. In addition, I have decided it is necessary to reverse this decision on other grounds.

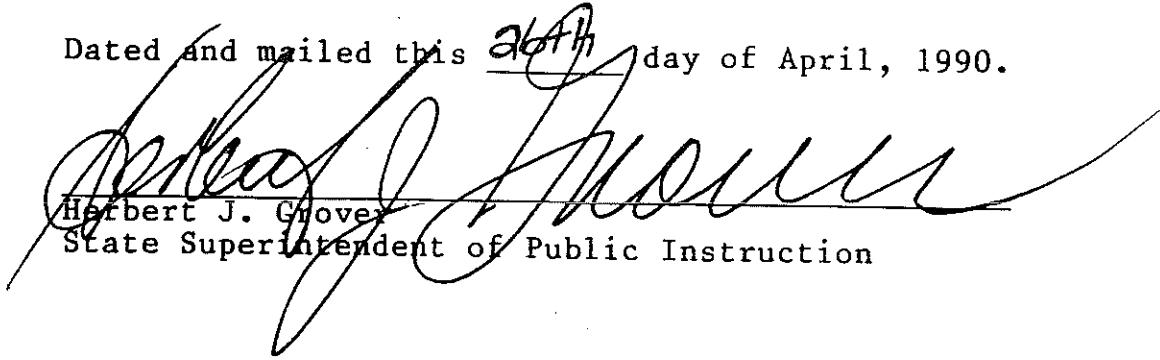
It is with great reluctance that I have reached this decision to reverse the school board. My decision should in no way be construed as condoning the violent actions of the student. Nor should they be construed as not being supportive of the school district's attempts to control student behavior which endangers the safety of others.

The record indicates that Patrick has trouble controlling his temper and it has been suggested that he seek professional assistance for this. I would urge the district and Patrick's mother work together to determine what Patrick's needs are, and explore various avenues for seeing that Patrick's needs are met, if they have not already done so. It is not my role to review the substance of the board's decision or to direct the district's actions in dealing with this individual student. However, it is clear that it is my role to review the procedural aspects of the expulsion hearing. In doing so it is my responsibility to ensure that all procedural requirements have been followed. As such, as discussed above, the decision of the board must be reversed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Patrick P [REDACTED] from the Mauston School District is hereby reversed.

Dated and mailed this 26th day of April, 1990.


Herbert J. Groves
State Superintendent of Public Instruction